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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,969	01/24/2001	Dave W. Gordon	2096.00C	2336

7590 07/05/2002

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EXAMINER

PATTERSON, MARIE D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 07/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/768,969

Applicant(s)

GORDON, DAVE W.

Examiner

Marie Patterson

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 June 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


Marie Patterson
Primary Examiner
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Response to Arguments

1. Applicant's arguments filed 6/20/02 have been fully considered but they are not persuasive.

In response to applicants' arguments directed towards Bulzomi, the rejection as recited in the last office action modified Bulzomi by merely orienting the radiant barrier layer so that the heat would be reflected inwardly. The motivation for doing such is found in Bulzomi which suggests the use of temperature control footwear to provide insulation and heat retaining properties (column 1 lines 55-65) and further taught by Oatman or Latzke which both teach such an orientation of a heat reflective layer. Oatman and Latzke have not been applied as anticipatory references or as teaching for any specific layers, arrangement of layers, etc., they have been applied merely as a teaching for orienting a reflective layer to reflect heat inwardly towards a wearer.

In response to applicants' arguments directed towards Latzke, the metal layer of Latzke is considered to be a radiant barrier inasmuch as applicant has defined such in the claims. The metal layer of Latzke is recited as causing the heat to be uniformly distributed within the device and the device having an excellent storage and distribution of heat to the body which would otherwise be lost to the environment. Since the device prevents loss of heat to the environment, it must be reflected/kept in the device.

In response to applicants' argument that Latzke and Bulzomi are opposed to each other, this is true, however both devices are related to temperature control footwear. Bulzomi even discusses footwear to retain heat in column 1 lines 55-65. It would have been obvious to modify the footwear of Bulzomi to retain heat if that is what was desired

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by the wearer or the environment which the footwear is going to be used in especially in view of the disclosure of Bulzomi that in some situations heat retention is desired and Latzke and Oatman clearly provide motivation to orient the layers such that the heat is retained in the footwear for use in cold temperatures.

1. Telephone inquiries regarding the status of application or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the Examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148 or the **Tech Center 3700 Customer Service Center number is (703) 306-5648**. For applicant's convenience, the Group Technological Center FAX number is (703) 872-9302. (Note that the Examiner **cannot** confirm receipt of faxes) Please identify Examiner ____ of Art Unit ____ at the top of your cover sheet of any correspondence submitted.

Inquiries only concerning the **merits** of the examination should be directed to Marie Patterson whose telephone number is (703) 308-0069.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g. copies of references cited, form PTO-1449, for PTO-892, etc. requests for copies of such papers should be directed to Valerie Douglas at (703) 308-1337.

Check out our web-site at "www.uspto.gov" for fees and other useful information.


Marie Patterson
Primary Examiner
Art Unit 3728